STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 21,115
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services imposing a sanction on her Reach Up Financial Assistance (RUFA) benefits for September and October 2007, and finding her ineligible for Reach Up in September 2007. The issue is whether the petitioner failed to meet Reach Up requirements.

FINDINGS OF FACT

1. At all times pertinent to this matter the petitioner has received RUFA benefits and has been a mandatory participant in the Department's Reach Up program. Her Reach Up activities are supervised by a Reach Up “case manager”. Her RUFA benefits are administered by a separate “benefits specialist”.

2. On July 24, 2007, the petitioner was scheduled to have a conciliation meeting with her Reach Up case manager because of unresolved issues with her compliance with Reach Up. On that date, her case manager was out sick, but the

petitioner met with another Reach Up specialist, and entered into a Conciliation Agreement with her. The agreement had two provisions. One was that the petitioner would attend an Employability Assessment Workshop at the Vocational Rehabilitation office on the morning of August 9, 2007. The other provision was that the petitioner was to find child care by August 10, 2007, and provide her case manager with the names of child care providers she had contacted. A follow up meeting with her regular case manager was scheduled for August 13, 2007. On the notice for that meeting it was noted in handwriting that the petitioner could bring the list of her child care contacts to that meeting.

3. The petitioner testified at her hearing (held on December 6, 2007) that on the morning of August 9 she went to the offices of Vocational Rehabilitation, but could not find the location of the workshop she had been scheduled for. She further testified that she immediately called her "worker" on her cell phone to report that she could not find the location of the workshop, and that she left a voice message to this effect with her phone number but received no call back from the Department.

4. Both Reach Up workers in the case testified that based on oral and visual information they had previously

given the petitioner regarding the location of the workshop, it is unlikely that the petitioner would not have been able to locate it on August 9.

5. However, following the hearing, in a memo dated December 19, 2007, the petitioner introduced copies of her cell phone records noting that she made a four-minute call to what appears to be the phone number of her RUFA benefits specialist at 8:29 a.m. on August 9, 2007. The Department indicated that it had no objection to the submission of this evidence. Based on the above, the petitioner's claims that she couldn't find the location of the workshop scheduled on August 9, and that she promptly that morning called her benefits specialist and left a message to this effect with a return number, are found to be credible.

6. There is no dispute that the petitioner did not attend the scheduled meeting with her Reach Up case manager on the morning of August 13, 2007. Later that same day the case manager sent a "Sanction Authorization" form to the petitioner's RUFA benefits specialist (the one the petitioner had called on August 9, see *supra*). Pursuant to Department policy, no copy or reference to the sending of this form was provided to the petitioner.

7. On the form, the case manager noted two reasons for the sanction. One was that the petitioner "did not attend employability assessment workshop on 8/9/07 as agreed". The other was that the petitioner "did not contact [case manager] by 8/10/07 about finding or arranging day care". The form said nothing about the petitioner missing the meeting with her case manager on August 13, 2007.

8. The next day, August 14, 2007, the petitioner's RUFA benefits specialist sent the petitioner a notice informing the petitioner that her Reach Up grant would be sanctioned $75 beginning September 1, 2007, and she also sent a separate "reminder" that the petitioner's remaining RUFA benefits for September would not be issued until she met with the RUFA benefits specialist on September 4, 2007. Neither notice contained any reason or explanation for the sanction other than "failed to comply with Reach Up requirements without good cause".

9. As noted above, there is no dispute that the petitioner missed the August 13, 2007 meeting with her Reach Up case manager. The case manager recalls that she received a phone message on August 14 that the petitioner "forgot" the meeting. The petitioner recollects, and her phone records reflect, that she made this call on August 15. At any rate,

the case manager recollects that she left a phone message for the petitioner on August 17 reminding her of her "sanction appointment" on September 4. It does not appear that the case manager made any attempt to reschedule the Reach Up meeting or to otherwise determine whether the petitioner had "good cause" (see *infra)* to miss either the August 9 or August 13 meetings.

10. At the hearing, none of the Department's witnesses made any reference to the petitioner's August 9 phone call in their testimony. To date, the Department has made no claim or showing that the case manager ever knew anything about the phone call the petitioner had made to her benefits specialist on August 9, 2007. Regardless of the possible reasons why the benefits specialist, herself, never either received or acknowledged the message (see *infra*), it certainly appears that it was never passed on to the case manager. In light of this, the action of the benefits specialist on August 14, implementing a sanction against the petitioner for her failure to attend the August 9 workshop (the *subject* of the petitioner's message to her on August 9) was, at best, premature.

11. Most of the testimony presented by the Department at the hearing, and much of its written legal arguments

submitted after the hearing,[1] concern the petitioner's actions in the four or five weeks *after* August 14, 2007. However, for the reasons given below, this is deemed to be largely irrelevant.

ORDER

The Department's decision is reversed.

REASONS

As noted above, the written sanction notice that the Department sent to the petitioner on August 14, 2007 did not

[1] On December 21, 2007, immediately following the submission of the petitioner's phone records, the parties informed the hearing officer by email that they had agreed to submit legal briefs in "early January". On January 25, 2007 the Board's clerk furnished the parties with a CD copy of the recorded testimony at the hearing. Following that, nearly three months elapsed in which the Board did not hear from either party. The hearing officer admittedly held off taking any action during this time in the expectation that the Department would either settle the matter or provide a direct response to the petitioner's post-hearing submission of evidence. Having heard nothing from the parties, the hearing officer issued a Recommendation to the parties dated April 7, 2008. Before this Recommendation was sent to the Board, the Department moved to "withdraw" it, based on an agreement that had been made between the parties (but apparently not communicated to the hearing officer) to delay submission of their written arguments. The matter was removed from the Board's agenda for its meeting on May 7, 2008. On April 8, 2008, the petitioner submitted her Memorandum of Law.

The Department submitted its Memorandum of Law on May 6, 2008. In its arguments the Department essentially ignores its failure to record, acknowledge and return the petitioner's phone call on August 9, 2007. Rather, the Department argues that the Board should not credit the petitioner's version regarding the *contents* of that call. As noted above, the hearing officer finds the petitioner's version of the phone call credible.

Accompanying its memorandum, the Department also submitted a Motion for Recusal of the hearing officer based on his supposed "prejudgement" of the matter in his April 7 Recommendation. This motion is denied. See *In re T.L.S. and M.J.C.*, 144 Vt. 536 (1984). (See also, Rule 11 V.R.C.P.)

contain any explanation for the sanction other than "failed to comply with Reach Up requirements without good cause". At the outset, it can be ruled that this notice was plainly deficient under the regulations and as a matter of due process in informing the petitioner of the "reasons" for its actions. W.A.M. 2228.2, Fair Hearing No. 19,802. But the Department's problems in this case go far deeper than its written notices.

As noted above, the petitioner has credibly established that she called and left a message for her RUFA benefits specialist on August 9, 2007 that she could not locate the workshop she was required to attend that morning. Even though the evidence in this case may well also demonstrate that both before and immediately after August 14, 2007 the petitioner was ambivalent concerning her participation in Reach Up, it must also be noted that by the time of the hearing in this matter the petitioner had been fully complying with Reach Up for several weeks, and had *prospectively* resolved all the issues that were the basis of the sanction actions that are the subject of this appeal. Thus, given the credibility of the petitioner's August 9 phone message, subsequent events make it much more likely that the entire matter could have been resolved at the outset

had the Department simply responded to that call *before* taking the sanction and benefit termination actions against her on August 14. But even if it disagrees with this assessment, once the petitioner's record of the August 9 phone call came to light, it is simply inexplicable that the Department would persist in pursuing the matter without addressing the significance of this evidence in light of its own policies, practices, and responsibilities.

At any rate, it has been found that at the time that the benefits specialist issued the notice of sanction, she either had, or should have had, a four-day-old phone message from the petitioner addressing one of the two reasons for the sanction that the Reach Up case manager had reported to her the day before. Whether or not she ever got this message (an issue that remains totally unaddressed by the Department) has no bearing on the result of this appeal. If she *had* gotten the message, there can be no question that under any minimal standard of fairness, due process, and common courtesy, it was clearly incumbent upon her to have checked with either the petitioner or the case manager regarding the message *before* issuing the notice of sanction.

However, given the demeanor, experience and reputation of this particular benefits specialist, the much more likely

and benign explanation for the events in question is that she somehow inadvertently and uncharacteristically (but humanly) failed to receive or respond to the petitioner's August 9 phone message. Still, the fact that the petitioner *did* make the call (regardless of what the Department now speculates were its contents) leaves the Department in the same untenable position regarding the fairness and validity of the August 14 notice as if the worker had simply ignored it.

In light of the foregoing, the issue of child care (to the surprising extent that the Department appears to argue that this issue *alone* justified the sanction) can be addressed summarily. On the form that the Reach Up case manager sent the RUFA benefits specialist on August 13, 2007 listing the two reasons for the sanction, the reason pertaining to child care was simply wrong. The petitioner's conciliation agreement (supra) did *not* require her to contact her case manager by August 10 regarding her child care arrangements, only that she had until that date to make the contacts themselves. The petitioner was not required to report anything to her case manager in this regard until their meeting on August 13. (As noted above, the case manager, herself, had not drafted and was not a signatory to the conciliation agreement.)

At the hearing, the petitioner credibly testified that following her conciliation meeting in July (with the substitute worker) she had arranged with her parents to provide child care. Whether or not her case manager would have deemed this sufficient to comply with the requirements of Reach Up, there is no question that it was within the letter of the written conciliation agreement. It is true that the petitioner did not attend the scheduled follow-up meeting with her caseworker to report the results of her search for child care and discuss this potential issue. But, as noted above, missing the August 13 meeting was *not* stated as a basis for the petitioner's sanction in the case manager's communication with the petitioner's benefits specialist. Thus, to the extent that the adverse action on August 14, 2007 was based on the issue of child care, it must be concluded that the Department's decision process and notice in this regard were *further* deficient, both factually and as matters law (see *supra*).

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